

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

61083

FILE: B-185796

DATE: July 6, 1976

MATTER OF: Noland Company, National Accounts

98342

**DIGEST:**

Contractor's claim for rescission or reformation of contract due to alleged mistakes in bid is denied where bids received showed normal upward progression from low to high bid and did not provide contracting officer with constructive notice of alleged mistakes. Further, contractor's assertion that since it is not "stocking or warehousing dealer" it does not realize certain cost savings, is not dispositive since record does not indicate that contracting officer knew or should have known of contractor's status in this regard, or that other bidders were not in similar status.

Invitation for bids (IFB) DSA700-75-B-2636 was issued on June 6, 1975, by the Defense Supply Agency (DSA). The IFB contained contract line item numbers (CLIN's) for varying quantities and types of steel pipe. Bids were received from six bidders with the Noland Company, National Accounts (Noland), the low bidder on CLIN's 0001-0004 and 0006-0007. Ohio Pipe Valves & Fittings, Inc. (Ohio), was the low bidder on CLIN 0005. Bids received were as follows (evaluated pursuant to discount and multiple award evaluation provisions of the IFB):

CLIN

0001	6525.40(N)	7285.60(OP)	7490.00(RH)	8681.40(V)	8866.20(MM)
0002	8552.75(N)	9000.00(RH)	11375.00(OP)	12150.00(MM)	15475.00(V)
0003	6540.38(N)	7625.00(RH)	8025.00(OP)	8787.50(V)	10400.00(MM)
0004	3766.00(N)	3900.00(RH)	4050.00(OP)	5100.00(MM)	6600.00(V)
0005	18744.00(JP)	18777.00(N)	19083.00(OP)	19386.00(V)	19500.00(RH)
	20070.00(MM)				
0006	28206.00(N)	29776.50(JP)	30312.00(OP)	31050.00(RH)	32620.50(V)
	33840.00(MM)				
0007	18780.00(N)	18882.00(JP)	19227.00(OP)	19500.00(RH)	19710.00(V)
	21243.00(MM)				

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N = Noland Company  
OP = Ohio Pipe Valves & Fittings, Inc.  
RH = The R. H. Pines Corporation  
V = Valley Steel Products Company  
MM = The Mutual Mfg. & Supply Company  
JP = Jupiter Pipe & Mfg. Company

On August 4, 1975, Noland was awarded contract DSA700-76-C-0148 for CLIN's 0001-0004 and 0006-0007 at a total price of \$72,370.53.

By letter dated August 4, 1975, Noland advised the contracting officer of an alleged mistake in bid and requested reformation of the contract in the form of a price increase of \$10,658.82, to a total price of \$83,029.35. This request was denied by DSA on September 2, 1975. Subsequently, by letter dated September 8, 1975, Noland again requested relief from DSA for its alleged mistake in bid which was denied by DSA by letter dated September 11, 1975. By letter dated January 19, 1976, Noland requested relief from our Office in the form of reformation or rescission of the contract.

Noland alleges a two-part mistake:

1. In calculating applicable freight rates from the U.S. Steel Corporation (U.S. Steel) mill (Noland's supplier) in Lorain, Ohio, to the shipping destinations of Mechanicsburg, Pennsylvania; Memphis, Tennessee; and Tracy, California, Noland failed to move a decimal point and consequently calculated the charges for each CLIN based on 1 foot of pipe instead of 100 feet of pipe as it intended to do.

2. Noland used the wrong freight rate for all CLIN's.

In support of these allegations, Noland has submitted a copy of its allegedly contemporaneous worksheet and a copy of U.S. Steel's price quotation to it.

Noland also argues that although it is a regular dealer in steel pipe, it is not a "stocking or warehousing dealer." Such dealers, Noland alleges, obtain a wholesale price of from 5 to

10 percent less than other dealers by combining several different orders into 1 large order. Additionally, Noland alleges that such dealers realize a 20 to 50 percent savings on freight shipments by virtue of having their own fleet of trucks, as opposed to dealers such as Noland who must ship commercially.

In recommending that Noland's request for relief be denied, the contracting agency takes the position that the price differentials between the various bids were not great enough to put the contracting officer on constructive notice of Noland's alleged mistake in bid. Further, the agency points out that all bidders were presumably competing on the same basis, since all bidders represented themselves as regular dealers.

The general rule is that the sole responsibility for preparation of a bid rests with the bidder. Sundance Construction, Inc., B-182485, February 28, 1975, 75-1 CPD 123. Therefore, where the bidder makes a unilateral mistake in bid it must bear the consequences of its mistake unless the contracting officer was on actual or constructive notice of the error prior to award. Westinghouse Electric Corporation, B-185400, March 2, 1976, 76-1 CPD 151. Saligman v. United States, 56 F. Supp. 505 (E.D. Pa. 1944). Wender Presses, Inc. v. United States, 170 Ct. Cl. 483 (1965). The test for constructive notice is:

"\* \* \* that of reasonableness, i.e., whether under the facts and circumstances of 'the particular case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer' \* \* \*."

Wender Presses, *supra*, quoting Welch, Mistakes in Bids, 18 Fed. B.J. 75, 83 (1958), 53 Comp. Gen. 30 (1973).

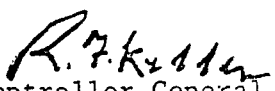
The record in the instant case indicates a normal upward progression from low to high bids. Expressed in percentages,

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Noland's bids were higher than the next high bid by 11.6 percent on CLIN 0001, 5.2 percent on CLIN 0002, 16.6 percent on 0003, 3.6 percent on 0004, 5.6 percent on 0006, and .5 percent on 0007. Based on this record, we agree with the agency that these differentials were not great enough to charge the contracting officer with constructive notice of Noland's alleged mistakes.

With regard to Noland's claim that it is not a "stocking or warehousing dealer," and assuming arguendo the truth of Noland's contentions on this point, there is nothing in the record to indicate that the contracting officer was or should have been aware of Noland's status in this regard. Further, there is also nothing in the record to indicate that other bidders were not in a similar status as Noland, i.e., regular dealers but not "stocking or warehousing dealers."

Thus, we agree with DSA that Noland's contract should not be reformed or rescinded, and Noland's claim is therefore denied.

  
Deputy Comptroller General  
of the United States